



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>



1069602 - R8 SDMS

MAY 14 2002

ENVIRONMENTAL
PROTECTION AGENCY

MAY 21 2002

MONTANA OFFICE

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jon C. Nickel
Jay Spickelmier
ASARCO Incorporated
P.O. Box 1230
East Helena, MT 59635

RE: Demand for Stipulated Penalties -
Administrative Order on Consent
EPA Docket No. CERCLA-VIII-91-17

Dear Mssrs. Nickel and Spickelmier:

By letter dated February 28, 2002, the United States Environmental Protection Agency (EPA) notified you that ASARCO, Incorporated ("Asarco") was in violation of the above-referenced Administrative Order on Consent ("Order") due to its failure to fund the East Helena Lead Education and Abatement Program ("Lead Program") and that stipulated penalties had accrued. The purpose of this letter is to notify you that, pursuant to Section XVIII.A. of the Order, payment of stipulated penalties is due within 30 days of your receipt of this demand letter.

Pursuant to the Third Modification of the Order, dated June 20, 1996, Section 3.7 of the Work Plan requires Asarco to fund the Lead Program. Section XVIII.A. of the Order makes Asarco liable for stipulated penalties for a failure to perform in accordance with the requirements of the Order. Section XVIII.B. identifies failure to perform Work in accordance with the requirements of the Order as "Tier I Noncompliance." Stipulated penalties for Tier I Noncompliance are set as follows:



<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1 st through 14 th Day	\$5,000
15 th through 30 th Day	\$10,000
31 st day and beyond	\$20,000

According to the Lewis and Clark County Health Department, Asarco became delinquent on its payments on January 1, 2002. Asarco accrued stipulated penalties totaling \$1,110,000 between January 1, 2002 and March 15, 2002, the date the County received Asarco's payment for November 2001 Lead Program activities. Pursuant to Paragraph XVIII.A. of the Order, payment of stipulated penalties is due within 30 days of your receipt of this demand letter.

Pursuant to Section VIII.D. of the Order, payment may be made by forwarding a certified or cashier's check, made payable to the "Hazardous Substance Superfund" to:

Mellon Bank
 1 Mellon Bank Center
 11th Floor, Room 1110
 Pittsburgh, PA 15258-0001
 Attn: EPA Superfund Account
 EPA Region VIII
 Lock Box #360859M

Payment must be identified as "Stipulated Penalties - East Helena site" and shall reference the payor's name and address, the EPA site identification number (Site No. 8T30), and the docket number of the Order (EPA Docket No. CERCLA-VIII-91-17). Copies of the transmittal letter and check shall be sent to:

Scott Brown, EPA Project Manager
 United States Environmental Protection Agency, Region 8
 Federal Office Bldg.
 10 West 15th Street, Suite 3200
 Helen, Montana 59626

Interest, handling charges and additional penalty charges will be assessed, as provided in Section VIII.E. of the Order, if payment is not made in a timely manner.

Should you have any questions, the most knowledgeable person on my staff regarding this matter is Suzanne Bohan, Enforcement Attorney. Ms. Bohan can be reached at (303) 312-6925.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

~~cc:~~ John Wardell, 8MO ✓
Scott Brown, 8MO
Bob Fox, 8MO
David Sturn, 8MO
Suzanne Bohan, 8ENF-L
Douglas McAllister, Asarco